IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.440 OF 2006
IN
SUIT NO.4913 OF 2000

Majid Ahmed Oomerbhoy Plaintiff

versus

Rashid Sattar Oomerbhoy & ors. Defendants

and

The Court Receiver, High Court,
Bombay and another Respondents

Mr.A.N.Maniyar for applicants.

Mr.Thakore i/by Thakore & Jariwalla & Associates for plaintiffs.

Mr.M.Kanchwalla i/by S.Mohamedbhai for respondents 2, 3 and 4.

Mr.Sanjay Jain i/by S.K.Srivastata & Co. for respondent no.1.

Mr.D.V.Deokar, 1st Assistant to Court Receiver present.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 3rd July 2006

PC :

1. This Chamber Summons is taken out by respondent no.2 to challenge an order passed by the Court Receiver dated 21st March 2006. By

this order, the Court Receiver has fixed the royalty amount at Rs.88,200/- per month in respect of Flat No.2A, 2nd Floor, Andromeda Apartments, Andromeda Co-op. Housing Society Ltd; Worli Sea Face, Mumbai 400 025 (hereinafter referred to as the "subject premises"). According to respondent no.2 he is residing in the subject premises along with his family members from May 1977. He claims to be one of the members of the Ahmed Oomerbhoy family. He is claiming to be a relative of plaintiffs 1 to 4. It is his contention that he has a share in the family property, and, therefore, he is in occupation of the subject premises.

2. In this matter it is not in dispute that in the suit for dissolution of firm and accounts, an Application was made for appointment of Court Receiver and the Court Receiver has also been appointed in respect of these premises. However, the direction is not to dispossess respondent no.2 but he shall be appointed as an agent of the Court Receiver. The Court Receiver was directed to fix royalty amount which would be payable month to month.

3. In para 3 and 4 of the affidavit in support

of this Chamber Summons the exercise of earlier fixation of compensation has been referred to. There is a reference also to the dispute with regard to the exact area in occupation of respondent no.2.

4. The grievance of Shri Maniyar appearing for second respondent is that the second respondent appeared before the Court Receiver, through his Advocate but when the order dated 5th May 2005 fixing royalty of Rs.88,200/- was passed, no opportunity was given by the Court Receiver to respondent no.2 or his advocate, to make appropriate submissions. He submits that the order passed fixing royalty of Rs.88,200/- is thus an ex-parte order. The applicant is nevertheless paying compensation/royalty at the rate of Rs.53,000/- per month for the occupation of this flat. A reference is made in this proceeding to an order passed by this Court on 23rd March 2005 which was carried in appeal to a Division Bench, to which I have been a party. The Division Bench order refers to the area in occupation of the applicant as 1,750 sq.ft. and directs that the Court Receiver should proceed and fix the royalty in respect of this area.

5. In pursuance of the order passed by the Division Bench, the exercise of refixation of royalty was undertaken and the order dated 21st March 2006 confirms the earlier rate of Rs.88,200/- per month. Aggrieved by this exercise and order dated 21st March 2006 that the present Chamber Summons has been filed.

6. Shri Maniyar reiterates his grievance that fixation of royalty was ex-parte. He submits that the Court Receiver has reiterated his finding and conclusion referred to in the order of this Court made on 25th March 2005. In the fresh hearing which was to be conducted pursuant to the order of learned Single Judge and the Division Bench, the Court Receiver has not adverted to any materials but has confirmed his earlier order. He submits that proper opportunity needs to be given and he is agreeable to the Court Receiver refixing the royalty in respect of 1,750 sq.ft. on condition that the difference between the amount which is presently being paid to the Court Receiver as monthly compensation and the amount determined by him by order dated 21st March 2006 is made good by him. He will deposit the arrears from 21st March 2006 in addition to the monthly amount of Rs.53,000/-

being deposited regularly. He submits that some time may be given to pay the difference and upon deposit the Court Receiver may be directed to refix the royalty by taking into account submissions and contentions of both sides as also the valuation.

7. Shri Jariwala appearing for the plaintiff contends that this exercise of fixing the royalty has already been done. There is no occasion to again give any opportunity to respondent no.2. Admittedly, when the area in occupation is not disputed, then considering the prevalent market rate, respondent no.2 is directed to pay this amount, which need not be reduced or interfered with. Therefore, Chamber Summons deserves to be dismissed as self-same contentions are repeated and reiterated.

8. Shri Jain appearing for first defendant has nothing to say in the matter and he submits to the orders of the Court.

9. In my view, the order passed on 21st March 2006 by the Court Receiver’s representative, does not make any reference to any valuation and the material which was placed before him, to arrive

at the figure of Rs.88,200/- per month. The said order repeats what is being observed earlier when the Court directed refixation of the royalty after giving an opportunity to both sides. Atleast the order should reflect whatever materials were placed by parties, that have been considered and in addition, the amount has been arrived at after referring to some valuation. There must be some basis to justify the figure arrived at, which is not there in the instant case. The order of the Court Receiver, therefore, deserves to be set aside. However, before directing a fresh exercise the following conditions shall be complied with by Respondent no.2.

10. ORDER :- a) Respondent no.2 shall, without prejudice to his rights and contentions, deposit with the Court Receiver the differential amount i.e. between amount of Rs.53,000/- and Rs.,88,200/-, for the period commencing from 21st March 2006 till 3rd July 2006 within a period of six weeks from today;

b) In addition, respondent no.2 shall continue to pay the amount of Rs.53,000/- per month without any default till the Court Receiver passes fresh

order on the issue of royalty in respect of subject premises;

c) In the event of default in depositing the differential amount as per clause (a) above so also the monthly royalty, this Chamber Summons shall stand dismissed without reference to the Court and the fixation of compensation at Rs.88,200/- shall stand confirmed;

d) In case amount is deposited, then the Court Receiver shall issue notice to plaintiff, defendant no.1 and respondent no.2 and hear them afresh on the point of fixation of royalty and pass appropriate orders in accordance with law, within a period of eight weeks from the date stipulated for their appearance;

e) Needless to state that parties would be at liberty to place before the Court Receiver such materials as are permissible in law. Further needless to add that the Court Receiver will be at liberty to obtain valuation of the premises from the Valuer appointed by him from his panel and after making available a copy thereof to parties, shall proceed to rely upon the contents thereof;

f) It is clarified that the area with regard to which the compensation has been fixed, has already been ascertained at 1,750 sq.ft. and it is pertaining to this area that the monthly compensation shall be determined by the Court Receiver;

g) The direction to deposit the differential amount is without prejudice to the rights and contentions of both sides and needless to add that in case Court Receiver passing fresh order determining royalty, respondent no.2 shall be obliged to pay the same with effect from 31st July 2001.

h) This direction is passed because of the undertaking of Shri Maniyar that the Court Receiver shall be allowed to take symbolic possession of the area admeasuring 1,750 sq.ft. He states that respondent no.2 is in possession of this area.

11. All contentions of both sides with regard to fixation of royalty are kept open for being urged before the Court Receiver. Chamber Summons made absolute accordingly. No order as to costs.

(S.C.DHARMADHIKARI, J.)